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Eckart Trucking, Inc. and Dixie Cannon. Case 32-CA-17765-1

May 6, 2002

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

The General Counsel in this case seeks summary judgment on the ground that the Respondent has failed to file an answer to the compliance specification.

On November 15, 2000, the National Labor Relations Board issued an Order directing the Respondent, Eckart Trucking, Inc., to make whole Dixie Cannon for loss of earnings and other benefits resulting from her discharge in violation of the Act.¹ On April 30, 2001, the United States Court of Appeals for the Ninth Circuit issued a judgment enforcing the Board's Order.²

A controversy having arisen over the amount of backpay due Cannon, on August 13, 2001, the Regional Director for Region 32 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.³

On October 25, 2001, the General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. On October 30, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.⁴

¹ Unpublished Order adopting the decision of Administrative Law Judge Albert A. Metz, in the absence of exceptions.

² No. 01-70252. On June 21, 2001, the Ninth Circuit issued an Order denying the Respondent's objection to the entry of the judgment.

³ The Respondent refused to accept service of the compliance specification and notice of hearing. A respondent's failure or refusal to claim certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

⁴ Although it appears that no further reminder letter was sent to the Respondent, this does not warrant denying the General Counsel's Motion for Summary Judgment. See, e.g., *Superior Industries*, 289 NLRB 834, 835 fn. 13 (1988).

The Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this case, the Board makes the following

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due Dixie Cannon for the period of August 16, 1999, through August 13, 2001, is as stated in the compliance specification, and we will order payment by the Respondent of the amount to Cannon, plus interest accrued on that amount to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Eckart Trucking, Inc., Elko, Nevada, its officers, agents, successors, and assigns, shall make whole Dixie Cannon, by paying her \$13,810.35, plus interest and minus tax withholdings required by Federal and State laws.

Dated, Washington, D.C. May 6, 2002

Wilma B. Liebman, Member

William B. Cowen, Member

Michael J. Bartlett, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

